

Appl. No. 10/820,284
Atty. Docket No. 9600
Amdt. dated 5/12/2008
Reply to Notice of Non-Compliant Amendment dated 4/11/2008
Customer No. 27752

REMARKS

Claim Status

Claims 1-8, 10-15, 17-20, and 127-128 are pending in the present application. No additional claims fees is believed to be due.

Claim 1 has been amended to add "automatically" and limitations found in Claims 9 and 16. Support for "automatically" can be found on page 8, paragraph 20.

Claims 9 and 16 have been canceled accordingly.

Claims 10, 17 and 18 have been amended to correct dependency.

Claims 21-126 have been withdrawn.

Claim 127 has been added; support for which can be found on page 38, paragraph 105.

Claim 128 has been added; support for which can be found on page 6, paragraph 16.

It is believed these changes do not involve introduction of new matter. Entry of these changes is believed to be in order and is respectfully requested.

Claim Objection

Claim 17 was rejected as being of improper dependent form. Claim 17 has been amended to correct dependency and, as such, Applicants request withdrawal of this objection.

Rejection Under 35 USC §102(b)

Claims 1, 13, 14, and 20 stand rejected as being anticipated by US 6,361,752 to Demarest for reasons of record on page 3 of the Office Action. Applicants respectfully traverse this rejection as applied to the amended claims. As stressed in MPEP §2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Demarest does not disclose methods of flattening a perfume release profile by incorporating two or more perfume modules comprising a first and second reservoir containing a perfume composition, and a first and second wick in fluid communication with the perfume

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composition as claimed in Claim 1. A similar argument applies to all remaining rejected Claims that are not specifically addressed as they depend directly or indirectly from Claim 1. Accordingly, Applicants request withdrawal of this rejection.

Rejection Under 35 USC §103(a)

Claims 1 and 15, 17-19 stand rejected under 35 USC §103(a) as being unpatentable over GB 2279010 to Pu in view of Demarest for reasons of record on pages 7-8 of the Office Action.

Claims 2-8 stand rejected under 35 USC §103(a) as being unpatentable over Demarest in view of US 4,663,315 to Hasegawa for reasons of record on pages 5-6 of the Office Action.

Claims 10-12 stand rejected under 35 USC §103(a) as being unpatentable over Demarest for reasons of record on pages 6-7 of the Office Action.

Applicants traverse all rejections as applied to the amended claims. More specifically, Examiner has not established a *prima facie* case of obviousness because Pu in view of Demarest does not teach or suggest all the claim limitations of Claim 1. Pu is directed to a device for selectively generating perfume gases that includes "a heating system 40 for providing heat *according to the movement of the selecting system 30...*" (emphasis added) (see page 4, lines 22-23). Pu does not teach or suggest the system claimed by Applicants, in which applying heat to the second wick occurs automatically. The Pu device is quite different, since each switch 217 activates individual containers of perfume (see Fig. 1 and 4). The selection will emit and then stop, while Applicants' claimed system automatically applies heat to another wick. Demarest does not cure the deficiency of Pu Demarest is directed to a single wick being heated on and of. An argument similar to the above applies to all remaining rejected Claims that are not specifically addressed as they depend directly or indirectly from Claim 1. Accordingly, Applicants request withdrawal of this rejection.

With respect to new independent Claim 22, which incorporates the limitations of original Claims 1 and 10, Applicants believe Claim 22 is patentable over Demarest as applied by the Examiner against Claim 10. Specifically, Demarest fails to appreciate the problem of wick clogging and ways to flatten a perfume release profile. As such, there is

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no motivation to maintain a reduced heating period from about 17 minutes to about 72 minutes. In Demarest, the function of down time is not related to wick clogging. Rather, the down time in Demarest is made to respond to "an environmental physical state or to an event in the vicinity of the apparatus" (see col 5, lines 52-54). Demarest gives the application of pesticides after dark when the target insects are prevalent (see col. 5, lines 46-48). Examiner admits that Demarest fails to disclose the time periods of from about 17 minutes to about 72 minutes (and further from about 20 minutes to about 60 minutes and about 30 minutes). Examiner points to Col. 5, lines 37-54 where the Demarest heating coil is utilized for heating only during certain times such as after dark and alleges that the no heat/reduced heating period may be 10-12 hours. The Examiner then states that, "it would have been obvious... to program the timer such that the down time... is a period from about 17 minutes to about 72 minutes ..." (Office Action Page 7). This comment warrants brief rebuttal as conceivably applied to Claim 22.

It is respectfully submitted that "routine experimentation" is not a proper basis for a rejection under §103. In this regard, the Examiner's attention is directed to a footnote in *In re Yates*, 663 F. 2d 1054, 211 USPQ 1149 at 1151 (CCPA 1981) chiding the solicitor:

The solicitor, relying upon *In re Aller*, 220 F. 2d 454, 105 USPQ 233 (1955), argues that it is 'not unobvious to discover optimum or workable ranges by routine experimentation.' In many instances this may be true. The problem, however, with such 'rules of patentability' (and the ever lengthening list of exceptions which they engender) is that they tend to becloud the ultimate legal issue – obviousness – and exact the formal exercise of squeezing new factual situations into pre-established pigeonholes. Additionally, the emphasis upon routine experimentation is contrary to the last sentence of §103. [emphasis supplied).

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Double Patenting

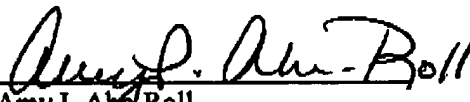
It is submitted that the double patenting rejection should be held in abeyance until allowable claims are finally settled. At that time, Terminal Disclaimers can be submitted, as may be appropriate.

Conclusion

In view of the foregoing remarks, reconsideration of the application and allowance of all claims are respectfully requested. No fee is believed to be due. Should any fee be required, please charge such fee to Procter & Gamble Deposit Account No. 16-2480.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

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